

EXHIBIT 34

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

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Videotaped Federal Rule 30(b)(6) Deposition
of PETER B. KESSLER, Ph.D., taken at 755 Page
Mill Road, Palo Alto, California, commencing
at 9:39 a.m., Thursday, August 4, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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<p>1 deposition, actually. Besides reviewing source code and 2 meeting with your counsel yesterday, did you do anything 3 else to prepare for your deposition today was the 4 question.</p> <p>5 MS. AGRAWAL: You mean specifically with 6 respect to the topics?</p> <p>7 MR. KAMBER: Yes. Okay. Fair enough.</p> <p>8 Q. With respect to the 30(b)(6) topics today, 9 did you spend -- did you do anything else besides meeting 10 with counsel and reviewing source code?</p> <p>11 A. No.</p> <p>12 MR. KAMBER: We've been going -- I'm about to 13 go into another section so now might be a good time for a 14 break. If you want to keep going, I'm happy to keep 15 going, but it's been a little over an hour now.</p> <p>16 MS. AGRAWAL: Let's break.</p> <p>17 THE VIDEOGRAPHER: This is the end of Disk 18 Number 1, Volume 1. We are off the record at 10:46 a.m. 19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: This is the beginning of 21 Disk Number 2, Volume 1. We are back on the record at 22 11:00 a.m.</p> <p>23 You may proceed.</p> <p>24 Q. BY MR. KAMBER: Dr. Kessler, with respect to 25 your testimony about reviewing the bytecodes.hpp file, do</p> <p style="text-align: right;">Page 50</p>	<p>1 We understand that -- I understand that 2 bytecodes.hpp has been produced, but it seems that none 3 of these other files that the witness is referring to 4 have been given to us yet today.</p> <p>5 MS. AGRAWAL: You haven't asked the witness 6 whether they refreshed his recollection.</p> <p>7 MR. KAMBER: I'm not sure that that is 8 actually the limitation in the order, but we can check 9 that.</p> <p>10 MS. AGRAWAL: Why don't we discuss it 11 offline.</p> <p>12 MR. KAMBER: Sure.</p> <p>13 Q. Okay. Dr. Kessler, is it Oracle's position 14 that the JDK 1.2 practices the asserted claims of the 15 '205 patent?</p> <p>16 MS. AGRAWAL: Objection. Form. And 17 objection. Privilege, caution the witness.</p> <p>18 THE WITNESS: So I can't interpret the claims 19 of the '205. I can read source code to you.</p> <p>20 Q. BY MR. KAMBER: Okay. So you -- Oracle 21 doesn't take any position as to whether or not JDK 1.2 22 practices the asserted claims of the '205 patent; 23 correct?</p> <p>24 MS. AGRAWAL: Same objections.</p> <p>25 THE WITNESS: So I believe that Oracle's</p> <p style="text-align: right;">Page 52</p>
<p>1 you remember that before?</p> <p>2 A. Yes.</p> <p>3 Q. You said that you also spent some time 4 looking at other source code files specifically to 5 prepare for your deposition here today; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And what source code files was that?</p> <p>8 MS. AGRAWAL: Objection to the extent that 9 calls for attorney-client communications. I instruct the 10 witness not to reveal protected conversations.</p> <p>11 And, Matthias, can we have an agreement so 12 that I can shorthand my objections so they don't take 13 forever? Can I just say, "Objection. Privileged. 14 Caution the witness," and we understand that that's the 15 shorthand for my objection?</p> <p>16 MR. KAMBER: That would be fine with me.</p> <p>17 MS. AGRAWAL: Great.</p> <p>18 THE WITNESS: Okay. I think my testimony was 19 that I did look at other source code, but that I don't 20 remember specific files, and, in fact, I don't remember 21 specific files.</p> <p>22 MR. KAMBER: Okay. We would ask that you 23 produce those files in accordance with the Judge's order 24 about producing files that the document -- that the 25 witnesses review in preparation for the deposition.</p> <p style="text-align: right;">Page 51</p>	<p>1 position is that the JDK does practice the '205.</p> <p>2 Q. BY MR. KAMBER: What is the basis for that 3 belief?</p> <p>4 MS. AGRAWAL: Same objection.</p> <p>5 THE WITNESS: Communication with the 6 attorneys.</p> <p>7 Q. BY MR. KAMBER: Do you have any other basis 8 for the belief that JDK 1.2 practices the asserted claims 9 of the '205 patent?</p> <p>10 MS. AGRAWAL: Same objections.</p> <p>11 THE WITNESS: My understanding of the '205 12 comes from my communications with the attorneys. And 13 using that information, I can look in the source code.</p> <p>14 Q. BY MR. KAMBER: I'm not sure I understand 15 that answer, Dr. Kessler.</p> <p>16 My question is: Do you have any other basis 17 besides conversations with counsel to believe that JDK 18 1.2 practices the asserted claims of the '205 patent?</p> <p>19 MS. AGRAWAL: Same objections.</p> <p>20 THE WITNESS: In addition to information that 21 I've obtained from the attorneys, I have my reading of 22 the code.</p> <p>23 Q. BY MR. KAMBER: Which code?</p> <p>24 MS. AGRAWAL: Same objections.</p> <p>25 THE WITNESS: In the case of the '205, I</p> <p style="text-align: right;">Page 53</p>

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<p>1 potential implementation of the asserted claims of the 2 '205 patent; is that correct?</p> <p>3 MS. AGRAWAL: Objection.</p> <p>4 THE WITNESS: I don't -- I don't recall 5 whether it was me or John.</p> <p>6 Q. BY MR. KAMBER: Is it Oracle's position that 7 the fast_invokevfinal method implements all of the 8 remaining asserted claims of the '205 patent?</p> <p>9 MS. AGRAWAL: Objection. Privilege. 10 Objection. Form, caution the witness.</p> <p>11 THE WITNESS: All of the remaining -- I don't 12 understand the question around all the remaining claims.</p> <p>13 Q. BY MR. KAMBER: Okay. Fair enough. 14 I'll represent to you that Oracle's counsel 15 at this point asserts Claims 1, 2, 3 and 8 of the '205 16 patent. Is it Oracle's position that the 17 fast_invokevfinal method implements each one of those 18 claims?</p> <p>19 MS. AGRAWAL: Same objections.</p> <p>20 THE WITNESS: So I'm an engineer, not a 21 lawyer. I can't interpret the claims of the patent.</p> <p>22 Q. BY MR. KAMBER: I understand. I'm not asking 23 for your personal testimony here. I'm asking for 24 Oracle's position.</p> <p>25 MS. AGRAWAL: Same objection.</p> <p style="text-align: right;">Page 58</p>	<p>1 So is it Oracle's position that all of Claims 2 1 -- well, let me rephrase.</p> <p>3 Does Oracle take a position as to whether the 4 fast_invokevfinal method implements Claim 1?</p> <p>5 MS. AGRAWAL: Same objections. I'll also 6 object to the extent it calls for expert testimony.</p> <p>7 THE WITNESS: So I can't answer that 8 question without revealing what Oracle's attorneys 9 interpret Claim 1 to be.</p> <p>10 Q. BY MR. KAMBER: Okay. But I'm not asking you 11 to reveal anything. I'm just asking you to tell me 12 Oracle's position so that our client can understand it.</p> <p>13 Is it Oracle's position that the 14 fast_invokevfinal method implements Claim 1 of the '205 15 patent?</p> <p>16 MS. AGRAWAL: Same objections. Objection to 17 the extent it calls for a legal conclusion, expert 18 testimony.</p> <p>19 THE WITNESS: And, again, I do not know how 20 to answer your question without revealing attorney-client 21 privileged information.</p> <p>22 Q. BY MR. KAMBER: Is it Oracle's position that 23 the only person who can answer that question is an expert 24 witness?</p> <p>25 MS. AGRAWAL: Same objection.</p> <p style="text-align: right;">Page 60</p>
<p>1 THE WITNESS: So without reviewing the 2 patent, which I can't do without consulting with my 3 attorneys, I don't know how to answer the question.</p> <p>4 Q. BY MR. KAMBER: So it's Oracle's position 5 that it doesn't know whether all of Claims 1, 2, 3 and 8 6 implement the -- excuse me. So it's Oracle's position 7 that fast invoke -- let me start over.</p> <p>8 Is it Oracle's position that the 9 fast_invokevfinal method -- I'm struggling to get this 10 one out, so bear --</p> <p>11 A. Take your time.</p> <p>12 Q. -- bear with me, Dr. Kessler.</p> <p>13 Does Oracle take no position as to whether 14 all of Claims 1, 2, 3 and 8 are practiced by the 15 fast_invokevfinal method?</p> <p>16 MS. AGRAWAL: Objection. Privilege, caution 17 the witness.</p> <p>18 THE WITNESS: I can't answer that question 19 without interpreting the claims of the patent.</p> <p>20 Q. BY MR. KAMBER: Would it help to look at the 21 claims themselves?</p> <p>22 A. No, because I am not an attorney.</p> <p>23 Q. Okay. I understand that you would have to do 24 an interpretation, but, again, I'm asking for Oracle's 25 position here today, not your interpretation.</p> <p style="text-align: right;">Page 59</p>	<p>1 Mr. Kamber, can we just take a quick break?</p> <p>2 MR. KAMBER: Sure.</p> <p>3 THE VIDEOGRAPHER: We're off the record at 4 11:15 a.m.</p> <p>5 (Discussion off the record.)</p> <p>6 THE VIDEOGRAPHER: We are back on record at 7 11:23 a.m.</p> <p>8 You may proceed.</p> <p>9 Q. BY MR. KAMBER: Dr. Kessler, have you had an 10 opportunity to confer with your counsel?</p> <p>11 A. Yes.</p> <p>12 Q. Let me go back to some questions from before. 13 Is it Oracle's position that the fast_invokevfinal method 14 implements Claim 1 of the '205 patent?</p> <p>15 MS. AGRAWAL: Mr. Kamber, if you have the 16 interrogatory response, that will help to refresh -- 17 that will probably -- I'm just trying to help you help 18 Dr. Kessler refresh his recollection. He's not here to 19 testify as an expert or as an attorney, so if you want to 20 just move this along.</p> <p>21 MR. KAMBER: Sure. Let me just ask a 22 question.</p> <p>23 Q. Dr. Kessler, are you unable to answer my 24 question unless and until you see Oracle's rog response?</p> <p>25 MS. AGRAWAL: Objection. Form.</p> <p style="text-align: right;">Page 61</p>

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<p>1 of these several places that you found them?</p> <p>2 A. Class names have to be resolved, method names</p> <p>3 have to be resolved, field names have to be resolved.</p> <p>4 And there may be others.</p> <p>5 Q. Is class name resolution a -- in Java, a use</p> <p>6 of the invention allegedly set forth in the asserted</p> <p>7 claims of the '104 patent?</p> <p>8 MS. AGRAWAL: Objection. Form.</p> <p>9 THE WITNESS: My understanding of the '104 is</p> <p>10 that it refers to the -- not the resolution of the</p> <p>11 symbolic reference, but the saving of the numeric</p> <p>12 reference to avoid the re-resolution of a symbolic</p> <p>13 reference.</p> <p>14 Q. BY MR. KAMBER: Let me try to rephrase it,</p> <p>15 then.</p> <p>16 Is it Oracle's position that the saving of</p> <p>17 resolved -- let me stop for a second. I'm trying to</p> <p>18 figure out how to refer to it. Is it resolved reference?</p> <p>19 How would you characterize it?</p> <p>20 MS. AGRAWAL: Objection. Form.</p> <p>21 THE WITNESS: You could -- so the resolved</p> <p>22 reference is the thing -- so a resolved reference is the</p> <p>23 result of calling resolve -- calling a resolution method,</p> <p>24 and a numeric reference is a particular encoding of that</p> <p>25 result.</p> <p style="text-align: right;">Page 186</p>	<p>1 MS. AGRAWAL: Objection. Calls for a legal</p> <p>2 conclusion, calls for expert testimony, and actually, I</p> <p>3 do think that's beyond the scope because you're asking</p> <p>4 him to interpret the '104 patent. And Topic 11 is asking</p> <p>5 for a conception reduction to practice and actual use,</p> <p>6 and you're asking questions in the abstract, and you're</p> <p>7 asking for Dr. Kessler's interpretation of the '104</p> <p>8 patent.</p> <p>9 MR. KAMBER: Dr. Kessler testified that one</p> <p>10 place he found this was in the resolution of class names</p> <p>11 in Java. I'm asking him that -- about that actual use.</p> <p>12 MS. AGRAWAL: Okay.</p> <p>13 Q. BY MR. KAMBER: So that's exactly what I'm</p> <p>14 trying to get at is: What is it in class names that</p> <p>15 actually uses the invention alleged set forth in the</p> <p>16 asserted claims of the '104 patent?</p> <p>17 MS. AGRAWAL: Objection. Form.</p> <p>18 THE WITNESS: Class names arrive as symbolic</p> <p>19 references, and in order to be used, have to be reduced</p> <p>20 to numeric -- not -- they don't have to be. One way to</p> <p>21 use them is to reduce them to numeric references, and</p> <p>22 then one can save the numeric references to avoid the</p> <p>23 resolution on subsequent use of that class name.</p> <p>24 Q. BY MR. KAMBER: Would it be fair to say that</p> <p>25 one reason to do that is because resolution requires some</p> <p style="text-align: right;">Page 188</p>
<p>1 MS. AGRAWAL: And just for the record -- we</p> <p>2 talked about this so many times -- you're not asking</p> <p>3 Dr. Kessler to draw legal conclusions or give expert</p> <p>4 testimony based on the '104 patent; correct?</p> <p>5 MR. KAMBER: No, I'm just asking questions in</p> <p>6 line with Deposition Topic Number 11 about Oracle's</p> <p>7 position regarding the evidence of actual use of the</p> <p>8 inventions allegedly encompassed by the asserted claims</p> <p>9 of the '205 -- or of the '104 patent. Excuse me.</p> <p>10 MS. AGRAWAL: I'm just going to assert a</p> <p>11 general objection of calling for a legal conclusion and</p> <p>12 asking for expert testimony.</p> <p>13 MR. KAMBER: Again, I dispute that and would</p> <p>14 note that that objection was not registered with respect</p> <p>15 to Deposition Topic Number 11 in the response to the</p> <p>16 deposition notice, unlike with Deposition Topic Number</p> <p>17 10.</p> <p>18 MS. AGRAWAL: It's not the topic that I'm</p> <p>19 objecting to; it's your questions.</p> <p>20 Q. BY MR. KAMBER: So Dr. Kessler, let me try</p> <p>21 this again: Is the -- is it Oracle's position that the</p> <p>22 resolution of symbolic references to numeric references</p> <p>23 and subsequent saving of the numeric reference in the</p> <p>24 case of class names practices the inventions allegedly</p> <p>25 set forth in the asserted claims of the '104 patent?</p> <p style="text-align: right;">Page 187</p>	<p>1 degree of work that is sought to be avoided by saving the</p> <p>2 numeric reference for future use?</p> <p>3 MS. AGRAWAL: Objection. Form.</p> <p>4 THE WITNESS: Yeah, are you suggesting that</p> <p>5 that's why it's done?</p> <p>6 Q. BY MR. KAMBER: I'm asking if that's one</p> <p>7 benefit.</p> <p>8 MS. AGRAWAL: Same objection.</p> <p>9 THE WITNESS: Okay. So restate the question.</p> <p>10 Q. BY MR. KAMBER: Sure. Is -- is the fact that</p> <p>11 you can avoid resolution later on -- re-resolution one of</p> <p>12 the benefits of using the already resolved numeric</p> <p>13 reference?</p> <p>14 MS. AGRAWAL: Objection. Form.</p> <p>15 THE WITNESS: That's my understanding of one</p> <p>16 of the benefits of the '104 patent.</p> <p>17 Q. BY MR. KAMBER: Do you understand -- well,</p> <p>18 what's your understanding as to any other benefits?</p> <p>19 MS. AGRAWAL: Objection. Form. And object</p> <p>20 to the extent it calls for expert testimony or a legal</p> <p>21 conclusion.</p> <p>22 THE WITNESS: Yeah, I'm not going to</p> <p>23 speculate on all of the reasons that the '104 patent</p> <p>24 exists.</p> <p>25 Q. BY MR. KAMBER: Okay. You mentioned method</p> <p style="text-align: right;">Page 189</p>

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<p>1 that's not the complete list and that I don't know what</p> <p>2 changes between class files for Java SE and the other</p> <p>3 instrumentalities, the functionality -- my understanding</p> <p>4 is that the functionality is the same, even if the file</p> <p>5 names or the method names are different.</p> <p>6 Q. BY MR. KAMBER: And you also just said that</p> <p>7 my list of class names, method names, and field names is</p> <p>8 not a complete list; correct?</p> <p>9 A. Yes, I did say that.</p> <p>10 Q. Okay. Can you please give me a complete</p> <p>11 list.</p> <p>12 MS. AGRAWAL: Objection. Form.</p> <p>13 THE WITNESS: I'm almost sure that there is</p> <p>14 at least one more place where symbolic references are</p> <p>15 resolved. I cannot think of it right now.</p> <p>16 Q. BY MR. KAMBER: But your recollection here</p> <p>17 today is there is only one more potential place where</p> <p>18 there is symbolic resolution to numeric resolution with a</p> <p>19 numeric resolution, numeric reference is then saved; is</p> <p>20 that correct?</p> <p>21 MS. AGRAWAL: Objection. Form.</p> <p>22 THE WITNESS: No, my testimony is that</p> <p>23 there's at least one.</p> <p>24 Q. BY MR. KAMBER: But you can't identify it for</p> <p>25 me today?</p> <p style="text-align: right;">Page 202</p>	<p>1 I declare under the penalty of perjury</p> <p>2 under the laws of the State of California that the</p> <p>3 foregoing is true and correct.</p> <p>4 Executed on _____, 2011,</p> <p>5 at _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 SIGNATURE OF THE WITNESS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 204</p>
<p>1 A. No.</p> <p>2 MR. KAMBER: I don't have any further</p> <p>3 questions of the witness on these topics. I would note</p> <p>4 that we do want to keep the deposition open on Topic 11</p> <p>5 as to -- subject to our discussion regarding the '520 and</p> <p>6 '720 patents, and we can still discuss that going</p> <p>7 forward. But other than that, I have no further</p> <p>8 questions for you today.</p> <p>9 MS. AGRAWAL: Thank you.</p> <p>10 THE VIDEOGRAPHER: This is the end of today's</p> <p>11 deposition. We are off the record at 5:10 p.m. The</p> <p>12 master tapes will be held by Veritext.</p> <p>13 (TIME NOTED: 5:10 p.m.)</p> <p>14 ---oOo---</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 203</p>	<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby</p> <p>5 certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all</p> <p>10 objections made by counsel at the time of the examination</p> <p>11 were recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel</p> <p>17 for any party to said action, nor am I related to any</p> <p>18 party to said action, nor am I in any way interested in</p> <p>19 the outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 5th day of August, 2011.</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 LESLIE ROCKWOOD, RPR, CSR NO. 3462</p> <p style="text-align: right;">Page 205</p>